

Ram Chandra Jha Vs. State of Bihar

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Court : Patna

Decided On : Apr-26-2005

Judge : Mridula Mishra, J.

Acts : Bihar Pension Rules, 1950 - Rules 45A, 58, 59 and 103

Appeal No. : C.W.J.C. No. 4662 of 2003

Appellant : Ram Chandra Jha

Respondent : State of Bihar

Advocate for Def. : A.K. Singh, SC III

Advocate for Pet/Ap. : S.P. Mukherji, Sr. Adv. and Shanti Pratap, Adv.

Disposition : Application allowed

Judgement :

Mridula Mishra, J.

1. Heard the counsel for the parties.

2. Petitioner has filed this application for quashing the memo No. 1325, dated 10.7.2002, issued under the signature of the Director, Mass Education, Bihar, Patna, whereby it has been decided that the petitioner's service has come to an end, prior to reaching the date of superannuation, as such, benefit of pension as

well as promotion is not admissible to the petitioner, as Non-formal Education Programme came to an end with effect from 1.4.2001, services of all the employees, including the petitioner, working under the aforesaid programme have been terminated and it was not possible to retain the petitioner's service separately. Further prayer of the petitioner, in this writ application, is for a direction to the respondents to pay all retirement benefits and arrears of salary for the period April, 2001, to February, 2003.

3. Petitioner was initially appointed as Lower Division Clerk in the office of the Administrative Officer, N.C.C., Chotanagpur Division, vide order, dated 1.7.1969. In the year 1979 service of the petitioner was adjusted in the newly created Adult Education Department vide order, dated 11.7.1979, Subsequently, Adult Education Department was renamed as Non-formal Education Department and all employees, who were working in Adult Education Department, automatically became the employee of Non-formal Education Department. Petitioner, thereafter, was posted at different places in the office of Non-formal Office project lastly, he was transferred to Gopalganj where he joined on 25.12.1994. The Director, Mass Education, Bihar, issued letter No. 2235, dated 22.9.2001 that the Non-formal Education Programme has come to an end with effect from 1.4.2001, as such, the service of its employees stand terminated. One of the employees of Non-formal Education Programme, namely, Krishnadeo Choudhary, one day prior to issuance of this letter of the Director, Mass Education, Bihar, filed an application for posting him to any other place and he was posted in the District Mass Education Office, Siwan, vide office order, dated 30.10.2001. Petitioner also filed an application for posting him to any other place, but respondents did not respond to it and finally petitioner reached the age of 58 years on 28.2.2003. After the issuance of the order, dated 21.9.2001, by the Director, Mass Education, Bihar, Krishnadeo Choudhary moved before this Hon'ble Court in CWJC No. 8578 of 2001 for a direction to the respondents to post him against a vacant post and to pay the salary due to him since April, 2001. During the pendency of the writ application, Krishnadeo Choudhary was posted against vacant post of Clerk-cum-Accountant in the office of District Mass Education Officer, Siwan, vide memo No. 2594, dated 30.10.2001, issued under the signature of the Director, Mass Education, Bihar, Patna, and the writ application was dismissed as not pressed in view of the

aforesaid order. Thereafter, petitioner also filed a writ application being CWJC No. 4025 of 2002 for the similar relief. This writ application was disposed of by order, dated 21.3.2002, directing the Commissioner and Secretary, Human Resources Development Department (Primary and Adult Education) Government of Bihar, Patna, to see as to whether any petition filed by the petitioner for similar relief is pending, if it is so, then it may be disposed of by a reasoned order in accordance with law. In compliance of the direction of the High Court in CWJC No. 4025 of 2002, the Director, Mass Education, Bihar, has passed the impugned order rejecting the representation filed by the petitioner vide memo No. 1325, dated 10.7.2002.

4. In the impugned order it has been said that there are break in service of the petitioner, as such, benefit of promotion/time bound promotion is not admissible to him. Since petitioner was working under Non-formal Programme which came to an end with effect from 1.4.2001, services of all employees, working under the aforesaid programme, including the petitioner, have been terminated. If in future any decision with regard to absorption of the retrenched employee will be taken, petitioner's case will also be considered. Petitioner is not entitled for any salary for the period subsequent to 1.4.2001 as the programme itself as well as his service has come to an end. It has also been held that the service of the petitioner has come to an end prior to reaching the date of superannuation, as such, the benefit of pension is not admissible to him.

5. The validity of the order has been challenged by the petitioner on the ground that by the impugned order the petitioner has been subjected to hostile discrimination as similarly situated person has been paid all retrial dues. It has also been stated by the petitioner that he was appointed in the year 1969 and has completed 34 years qualifying service in the State Government, as such, he is entitled for retrial benefits admissible to the Government employees. Salary for the period 22.4.1994 to 25.12.1994 as well as arrears of salary till the date of his superannuation is liable to be paid by the respondents as the petitioner has never been communicated any order regarding termination of his service.

6. Respondent No. 5, the District Mass Education Officer, Gopalganj, has filed a counter affidavit and supplementary counter affidavit has been filed on behalf of the Finance Commissioner. Respondent No. 5 has reiterated the same facts which has been stated in the impugned order under challenge. It has been stated that the petitioner is not entitled for pension and gratuity as his service has been terminated with effect from 1.4.2001 vide department's memo No. 2284, dated 12.9.2001. Petitioner attained the age of superannuation on 28.2.2003 but his service was terminated with effect from 1.4.2001; pension and gratuity is admissible to the Government employee who superannuates during service period. Since, petitioner did not retire from service, hence, he is not entitled for pensionary/retirement benefit and the gratuity. Group Insurance and general provident fund were admissible to the petitioner and have already been paid to him. In the counter affidavit of respondent No. 5, it has been stated that the petitioner has absented himself from 22.4.1994 to 25.12.1994 as he did not join his place of posting on transfer. Petitioner had challenged the order of transfer in the writ application bearing CWJC No. 9161 of 1994, which was disposed of with the direction to the petitioner to join on transferred place at Phulwaria and there he joined on 25.12.1994. For this period, no salary was paid to the petitioner as he did not serve for this period, as such, this period is a break in service of the petitioner. Regarding impugned order it has been stated that on the direction of the High Court petitioner's representation has been disposed of by a reasoned order and there is no illegality in the order.

7. In reply to this counter affidavit, it was stated by the petitioner that it is incorrect to say that the petitioner has not superannuated on 28.2.2003. Considering the fact that termination order was never communicated to the petitioner, as such, it will be deemed that the petitioner continued in service and kept on waiting for posting after the project came to an end with effect from 1.4.2001. Since petitioner was not posted anywhere, in the meantime, he superannuated on 28.2.2003. It has also been stated by the petitioner that CWJC No. 9161 of 1994 was filed by the petitioner challenging the order of transfer to Phulwaria project in the year 1994 as he was transferred to a place where there was no vacancy, petitioner finally joined at the transferred place on the direction of this Court, he is entitled for salary for this period and it can not be treated as break in service. No such order

has ever been communicated to him. The petitioner has filed his application before the District Mass Education Officer, Gopalganj, for grant of leave for the period 22.4.1994 to 25.12.1994 but till date the aforesaid application is still lying pending and has not been disposed of as yet. A supplementary counter affidavit has been filed on behalf of the Finance Commissioner. In the counter affidavit of the Finance Commissioner it has been stated that Bihar Pension Rules 45-A provides that when a Government servant is appointed for a limited time only or for specified duty on the completion of which he is to be discharged, in such case pension is not admissible. Petitioner's service was also for specified period for specified duty which came to an end with effect from 1.4.2001, as such, the pension is not admissible to the petitioner under Rule 45-A of the Bihar Pension Rules. It has also been stated that Rule 103 of the Bihar Pension Rules provides that an interruption in the service of Government servant entails forfeiture of his past service, except in cases the following (a) authorised leave of absence, (b) unauthorised absence in continuation of authorised leave of absence so long as the post of absentee is not substantively filled; if his post is substantively filled, the past service of the absentee is forfeited, (c) suspension, where it is immediately followed by reinstatement whether to the same or to a different post, or where the Government servant dies or is permitted to retire or is retired while under suspension, (d) abolition of the post or loss of appointment owing to reduction of establishment (e) transfer of non-qualifying service in an establishment under Government control, the transfer must be made by a competent authority, a Government servant who voluntarily resigns qualifying service can not claim the benefits of this exception, transfer to a grant-in-aid school entails forfeiture, (f) time occupied in transit from one appointment to another provided that the Government servant is transferred under the orders of competent authority, or if he is a non-gazetted Government servant with the consent of the head of his old office.

8. Considering the fact that the petitioner has absented himself from 22.4.1994 to 25.12.1994 for which no salary was paid to him, it is a break in service. The petitioner has also remained absent without information from 28.9.1980 to 27.5.1981 which amounts an unauthorised absence. These two instances show break in service of the petitioner. As such, he did not fulfil the requirement of minimum qualifying service of ten years, for pension, as such not entitled for

pension. Under the provisions of Rule 103 of Bihar Pension Rules because of interruption in service of petitioner, his service prior to 25.12.1994 can not be treated as qualifying service for the purpose of pension under Rules 58 and 59 read with circular No. 11779, dated 12.8.1969. In reply to the allegation made by the petitioner of hostile discrimination, it has been stated that the service of Krishnadeo Choudhary was not adjusted under Non-formal Education Scheme. He was working in Adult Education Scheme, as such, due to closure of Non-formal Education Scheme service of Krishnadeo Choudhary was not terminated and his case is different from the case of the petitioner.

9. The counter affidavit filed by the Finance Commissioner has been replied by the petitioner and it has been stated that there was no break in petitioner's service, Rules 45-A and 103 of the Bihar Pension Rules are not applicable to the facts and circumstances of the petitioner's case. Period of absence of the petitioner from 28.9.1980 to 27.5.1981 was regularised by the District Adult Education Officer, West Champaran, Bettiah, as the petitioner had filed an application on 2.4.1987 for grant of leave for this period on the medical ground, the leave for the aforesaid period was granted and the same was entered in the service book. He has also been paid salary and other allowances for the leave period and this period can not be treated as break in service. For the period 22.4.1994 to 25.12.1994 it has been stated that the petitioner was transferred in the year 1994 which was challenged by filing CWJC No. 9161 of 1994 and by order, dated 20.12.1994, the writ application was disposed of with a liberty to the petitioner to join his duty on 26.12.1994, thereafter, he filed an application before the District Mass Education Officer, Gopalganj, for grant of leave for the period 22.4.1994 to 25.12.1994 but till the date aforesaid application is lying pending and has not been disposed of as yet. Since the aforesaid matter, with regard to grant of leave for the period 22.4.1994 to 25.12.1994 has not been decided and is still pending, as such, the aforesaid period can not be treated as an unauthorised leave or break in service of the petitioner.

10. From the pleadings of the parties, it is clear that petitioner joined his service, initially in the year 1967 but his service was terminated by order, dated 25.1.1969. He was reappointed against sanctioned post on 1.8.1969. Thereafter, he

continued in his service, his absence from 28.9.1980 to 27.5.1981 was treated as leave and was paid his salary for the period, which is entered in the service book of the petitioner. So far the absence from 22.4.1994 to 25.12.1994 is concerned, the petitioner's case is that he filed an application for grant of leave for this period which is still lying pending with the respondents. Considering the fact that since 1.8.1969 to 21.4.1994 there is no break in the service of the petitioner. The period of unauthorised absence from 28.9.1980 to 27.5.1981, having been treated as leave and salary paid for this period. Rule 103 of the Bihar Pension Rules has no application in the case of the petitioner. There is no interruption in the service of the petitioner, from 1969 to 20.4.1994, enabling the respondents for forfeiture of past service of the petitioner. The petitioner has completed 35 years 4 months qualifying service without any break or interruption, even if the period of 22.4.1994 to 25.12.1994 is not counted for the qualifying pensionary service of the petitioner, the petitioner has already completed his qualifying pensionable service by remaining in service from 1.8.1969 to 20.4.1994. From the service book of the petitioner it is evident that this period of petitioner's service has not been questioned and it has been found to be satisfactory service for the purpose of pension as provided under Rule 58 of the Bihar Pension Rules. The service of a Government servant under Rule 58 of the Bihar Pension Rules is treated as qualifying pensionable service (1) if the service is under Government, (2) the employment is substantive and permanent, (3) service must be paid by the Government. The service of the petitioner was under the Government till the date he continued in service, his employment was substantive and it was permanent also, the appointment letter of the petitioner do not indicate that the petitioner was appointed for a limited time for a specified duty on the completion of which he was to be discharged from the service. Petitioner was appointed against sanctioned post on the order of the Director, his service was regularised vide office order No. 245, dated 17.11.1976, petitioner's service was confirmed vide letter No. 7011, dated 5.7.1977, petitioner's service was adjusted in the Adult Education Department and same Adult Education Department was subsequently renamed as Non-formal Education Department. From 1969 till 2001 there was no such indication that the appointment of the petitioner was for a specified period and the nature of the service was for limited period. Subsequently in the fag end of the

petitioner's service by letter, dated 21.9.2001 the Director, Mass Education, Government Bihar, informed the District Mass Education Officers of Bihar that the Non-formal Education Programme has come to an end with effect from 1.4.2001 and by that time the petitioner has already spent qualifying pensionable period of service. In this circumstances it can not be said that there is any application of Rule 45-A in the case of the petitioner and service of petitioner is not pensionable under Rules 58 and 59 of the Bihar Pension Rules.

11. In the facts and circumstance, the impugned order, dated 10:7.2002, contained in memo No. 1325, issued by the Director, Mass Education, Bihar, Patna, is quashed to the extent to which it has been held that the petitioner is not entitled for benefit of pension as he has not remained in service qualifying for retirement benefits. However, the claim of the petitioner for salary for the period 1.4.2001 to February, 2003, can not be allowed as he was not posted anywhere by the respondent during this period and he has not discharged any duty. The salary for the period 22.4.1994 to 25.12.1994 also can not be allowed as petitioner has not been able to show that any application filed by him for grant of leave for this period has remained pending before the authorities and still lying for disposal. Only a vague assertion has been made without giving any specified date on which such application was filed. In the service book of the petitioner this period has not been mentioned as the period approved as leave as such petitioner can not be allowed relief of arrears of salary for this period.

12. In the facts and circumstances, the writ application is allowed. Respondents are directed to pay all retirement benefits, including pension, gratuity, leave encashment to the petitioner along with 5 percent statutory interest on account of delayed payment. So far general insurance and general provident fund are concerned, that has already been paid to the petitioner.

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